

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6714 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
2 to 5 No
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MANOJBHAI NAVNEETLAL JAISWAL

Versus

STATE OF GUJARAT

Appearance:

MR IM PANDYA for Petitioner
Mr. A.J. Desai, APP for Respondent No. 1
MR NIGAM R SHUKLA for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 23/03/98

ORAL JUDGEMENT

Heard Shri I.M. Pandya, learned advocate for the petitioner. Rule. Mr. A.J. Desai, learned APP waives service of rule on behalf of Respondent No.1. Respondent No.2 though duly served by urgent notice vide order dated 13th January, 1998, is absent.

2. The petitioner has preferred the present application with a prayer to set aside or modify the order dated 20.8.1997 passed in Spl. Criminal Application No. 760 of 1997.

3. The petitioner was arrested at the behest of Respondent No.2 from the court compound of Kapadwanj. The petitioner was produced before learned JMFC, Kapadwanj on 21.8.1992 at 10.20 a.m. with the production memo as per xerox copy produced on page 96 in the proceedings of Spl. Criminal Application No. 760 of 1997. That the learned JMFC has noted on the said memo to the effect that accused has made complaint about ill-treatment and torture meted out to him in the custody by the officer described as "Deputy Sahib". The learned JMFC has further noted that the complainant has also complained about the pain on the part of his body on account of said ill-treatment. Subsequently, the petitioner has filed Criminal Complaint, which is produced on page 82-83 of the proceedings of Spl. Criminal Application No. 760 of 1997. That learned JMFC has taken on record the said complaint as Inquiry No. 76 of 1992 dated 15.12.1992 and has recorded the statement of the petitioner. The petitioner was thereafter sent for medical treatment and the matter was kept for further orders on receipt of injury certificate from the Medical Officer. That vide subsequent order dated 15.12.1992, the learned JMFC issued notice to the present respondent No.2 to remain present on 9.12.1992 and thereafter by further order he directed him to remain present on 8.1.1993. That it appears from page No. 82 to 84 produced in the proceedings of Spl.Cri. Application No. 760 of 1997 that learned JMFC has passed order under Section 202 of the Cr.P.C. after considering the injury certificate issued to the petitioner by the Medical Officer and the deposition of the petitioner. That the JMFC has observed that present respondent No.2 Nitiraj O. Solanki appears to have, prima facie, committed offence made punishable under Section 323, for which complaint is filed before him on 21st August, 1992. The said complaint is registered and process under Section 323 of the IPC, is ordered to be issued against present respondent No.2 and made returnable on 4.5.1994.

4. Learned Advocate Mr.Pandya has stated that subsequently in the said proceedings, a criminal complaint filed by the present petitioner before JMFC, Nadiad, the present respondent No.2 had appeared and had raised the objections that he being a public servant, not removable without the order of competent officer of

appropriate government, sanction as required under Section 195 of the Cr.P.C. is necessary. That the criminal complaint filed by the present petitioner cannot be taken cognisance of for want of such sanction as prescribed under Section 197 of the Cr.P.C.

5. That being aggrieved and dissatisfied by the said order of JMFC, Kapadwanj, present respondent No.2 preferred a Revision Application No. 96 of 1995 in the court of Sessions Judge, Nadiad. That vide order dated 7th May, 1997, the learned Sessions Judge allowed the Revision Application and set aside and quashed the order passed by the learned JMFC, Kapadwanj dated 30.5.1995 in the proceedings of C.R. No. 76 of 1992 below exhibit 39 and discharged the present respondent No.2 as accused of Criminal Case No. 636 of 1994.

6. That being aggrieved and dissatisfied by the above stated order of learned Sessions Judge, Nadiad, the present petitioner preferred Spl. Criminal Application No. 760 of 1997. That said application was notified for hearing before my Brother Judge Shri N.J. Pandya, J. That on 28.8.1997, the Court passed following order:

" Leave to amend.

After perusing the papers and reading the order of the ld. Sessions Judge, as well as the complaint at page Nos.81, 82 and 83, the approach of the ld. Sessions Judge as to the requirement of Section 195 seems to be correct. The ld. Magistrate is relying on inferences and possibilities instead of concentrating on the facts as disclosed by the complainant. Sanction under Section 195 has to be determined on the basis of the averments made in the complaint and the circumstances attendant upon the event immediately preceding it, in course of it and on conclusion thereof. In this background, the order of the ld. Sessions Judge is not required to be interfered with. Hence, the petition is rejected. Notice is discharged."

7. The present petitioner was not satisfied with the order passed by my Brother Judge N.J. Pandya and, therefore, he filed the present Misc. Criminal Application claiming speaking to minutes in respect to above stated order passed by my Brother Judge N.J. Pandya. That the said Misc. Application was notified

for hearing before my Brother Judge M.R. Calla and vide order dated 13.11.1997, following order is passed :

" This note for speaking to minutes is with regard to an order dated 28.9.97 passed by Hon'ble N.J. Pandya who has already been transferred to the High Court of Bombay and is no more available for speaking to minutes in this court. Therefore, no orders with regard to the note for speaking to minutes can be passed by this Court. The petitioner may move any other appropriate application in accordance with law. Note for speaking to minutes is hereby disposed of. "

8. That as the petitioner is not satisfied with the order passed by My Brother Judge M.R. Calla, petitioner has preferred present Misc. Criminal Application No. 6714 of 1997 by way of review. Shri Pandya has submitted that on account of non-availability of Justice N.J. Pandya, the order dated 28.8.1997 passed by Brother Judge N.J. Pandya in Spl. Criminal Application No. 760 of 1997 should be construed by this court and be reviewed in the context of submission made. It is submitted by Shri Pandya that on perusal of page Nos. 81 - 84 of the compilation produced in the proceedings of the said Spl. Criminal Application, Justice N.J. Pandya appears to have committed a factual error and instead of allowing the petition, has rejected the same. That as per the reasons stated in the order, the court was inclined to allow the petition and set aside and quash the order passed by learned Sessions Judge, Nadiad, in the proceedings of Criminal Revision Application No. 96 of 1995.

9. I have carefully gone through the page nos. 81, 82, 83 & 84 in the context of above stated order passed by my Brother Judge N.J. Pandya on 28.8.1997 and I do not find any factual discrepancy in the contents of page nos. 81 - 84 and the facts stated by my Brother Judge in the order dated 28.8.1997. Under the circumstances, I hold that no review application could be maintained as urged on behalf of the petitioner. If petitioner is not satisfied with the mode and manner in which my Brother Judge N.J. Pandya has passed the order dated 28.8.1997, in the proceedings of Spl. Criminal Application No. 760 of 1997, the petitioner could challenge the same in appropriate forum. However, in the absence of any prescribed procedure, this court cannot review the order as urged on behalf of the petitioner.

10. On the basis of the above stated discussion, the present Misc. Criminal Application No. 6714 of 1997 stands disposed of as rejected. Rule is discharged. No order as to costs.

p.n.nair